

REMARKS

Claims 1-6 are pending in the application. Claims 1-2 and 4-6 have been amended and claim 3 has been canceled, leaving claims 1-2 and 4-6 for consideration upon entry of the present amendment. Applicant respectfully requests reconsideration in view of the following amendment and remarks.

Claims 1 and 5 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to distinctly claim the subject matter that the applicant regards as the invention. Claims 1 and 5 have been revised, thereby rendering the rejection moot. Applicant respectfully requests that this rejection be withdrawn.

Claims 1, 2, 4, and 5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kunito (JP 06-032555) in view of Roose (U.S. 5,170,746). For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

Claims 1, 2, 4, and 5 include the following element: "wherein the mobile structure is positioned along the edge of the car roof so as to allow access to the controller mounted in the hoistway." Kunito and Roose do not teach or suggest this element.

Kunito teaches having a pivotable surface on top of the elevator car so that a mechanic can reach the wall. There is nothing in Kunito that teaches or suggests having a slidable rail along the guard rail so as to provide an opening along the guard rail to gain access to the controller. In addition, Roose does not teach or suggest the element, as Roose is directed to a portable livestock pen, which has nothing to do with the top of an elevator car.

In addition, Kunito specifically teaches away from having a slidable bar incorporated into the guard rail. Kunito teaches having a permanent fixed guard rail around the perimeter of the top of the elevator car. As seen in Figure 1, when Kunito extends the platform past the top

of the elevator car, the guard rail does not get removed so that there is an open space along the guard rail. Instead, Kunito teaches how to increase the work space on top of the elevator car while keeping the guard rail completely around the perimeter of the top of the elevator car. Accordingly, there is no motivation in Kunito to modify the reference to incorporate a slidable guard rail so as to create an open space along the guard rail.

In addition, the rejection is improper because the Examiner has relied on nonanalogous art in this rejection. See *In Re Wood*, 599 F2d 1032, 202 USPQ 171 (CCPA 1979). Roose describes a portable livestock pen, which has different design issues than a guard rail on top of an elevator car. With the livestock pen, there is a need to have the animals move in and out of the pen and thus, having a door as part of the pen would be something that is necessary for a livestock pen. Alternatively, the top of an elevator car is not a place that you would think of incorporating a slidable bar. The idea of the balustrade is to prevent the risk of falling into the hoistway when a mechanic is working on top of the elevator car in the hoistway. One skilled in the art of elevators would not have looked to a portable livestock pen reference to incorporate a slidable bar into the guard rail on top of the elevator car.

In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

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By: 

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